

AN ACT

RELATING TO THE DISPOSITION OF BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 PERTAINING TO CREMATION AND BURIAL OF INDIGENTS AND UNCLAIMED DECEDENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-12-1 NMSA 1978 (being Laws 1973, Chapter 354, Section 1, as amended) is amended to read:

"24-12-1. NOTIFICATION OF RELATIVES OF DECEASED.--

A. State, county or municipal officials having charge or control of a body of a dead person shall use due diligence to notify the relatives of the deceased.

B. If no claimant is found who will assume the cost of burial, the official having charge or control of the body shall notify the medical investigator stating, when possible, the name, age, sex and cause of death of the deceased.

C. The body shall be embalmed according to regulations of the state agency having jurisdiction. After the exercise of due diligence required in Subsection A of this section and the report to the medical investigator required in Subsection B of this section, the medical investigator shall be furnished detailed data demonstrating such due diligence and the fact that no claimant has been found. When the medical investigator has determined that due

diligence has been exercised, that reasonable opportunity has been afforded relatives to claim the body and that the body has not been claimed, he shall issue his certificate determining that the remains are unclaimed. In no case shall an unclaimed body be disposed of in less than two weeks from the date of the discovery of the body."

Section 2. Section 24-12-2 NMSA 1978 (being Laws 1973, Chapter 354, Section 2, as amended) is amended to read:

"24-12-2. DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF RECORDS OF INSTITUTION.--

A. Upon the issuance of his certificate that the remains are unclaimed, the medical investigator shall retain the body for use only for medical education or shall certify that the body is unnecessary or unsuited for medical education and release it to the state, county or municipal officials having charge or control of the body for burial. The state, county or municipal officials shall have the body removed for disposition within three weeks from the date on which the medical investigator released the body.

B. If the body is retained for use in medical education, the facility or person receiving the body for that use shall pay the costs of preservation and transportation of the body and shall keep a permanent record of bodies received.

C. If a deceased person was an inmate of a public

institution, the institution shall transmit, upon request of the medical investigator, a brief medical history of the unclaimed dead person for purposes of identification and permanent record. The records shall be open to inspection by any state or county official or district attorney."

Section 3. A new Section 24-12A-3 NMSA 1978 is enacted to read:

"24-12A-3. UNCLAIMED BODIES AND BODIES OF INDIGENT PERSONS--CREMATION PERMITTED.--The body of an unclaimed decedent or an indigent person, the disposition of which is the responsibility of the county pursuant to the provisions of Chapter 24, Article 13 NMSA 1978, may be cremated upon the order of the county official responsible for ensuring the disposition of the body or upon the order of any other government official authorized to order the cremation. Absent a showing of bad faith or malicious intent, the official ordering the cremation and the person or establishment carrying out the cremation shall be immune from liability related to the cremation."

Section 4. Section 24-13-1 NMSA 1978 (being Laws 1939, Chapter 224, Section 1) is amended to read:

"24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS AND OF INDIGENTS.--For the purposes of Chapter 24, Article 13 NMSA 1978, a dead person whose body has not been claimed by a friend, relative or other interested person assuming the

responsibility for and expense of disposition shall be considered an unclaimed decedent. It is the duty of the board of county commissioners of each county in this state to cause to be decently interred or cremated the body of any unclaimed decedent or indigent person. The county shall ensure that the body is buried or cremated no later than thirty days after a determination has been made that the body has not been claimed, but no less than two weeks after death. If the body is cremated, the county shall ensure that the cremated remains are retained and stored for no less than two years in a manner that allows for identification of the remains. After the expiration of two years the cremated remains may be disposed of, provided the county retains a record of the place and manner of disposition for not less than five years after such disposition."

Section 5. Section 24-13-2 NMSA 1978 (being Laws 1939, Chapter 224, Section 2) is amended to read:

"24-13-2. PERSONS DEEMED INDIGENT.--A deceased person shall be considered to be an indigent for purposes of Chapter 24, Article 13 NMSA 1978 if his estate is insufficient to cover the cost of burial or cremation."

Section 6. Section 24-13-3 NMSA 1978 (being Laws 1939, Chapter 224, Section 3, as amended) is amended to read:

"24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the unclaimed decedent had known assets or property of sufficient

value to defray the expenses of cremation or burial, invoices for the expenses shall be forwarded to such person or official authorized by law to be appointed administrator of the estate of the decedent, and such person or official shall pay the expenses out of the decedent's estate. To the extent that the deceased person is indigent, the burial or cremation expenses shall be borne by the county of residence of the deceased person. If the county of residence of the deceased person is not known, the burial or cremation expenses shall be borne by the county in which the body was found. The burial or cremation expenses may be paid by the county out of the general fund in an amount up to six hundred dollars (\$600) for the burial or cremation of any adult or minor."

Section 7. Section 24-13-4 NMSA 1978 (being Laws 1939, Chapter 224, Section 4, as amended) is amended to read:

"24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND CLOSING GRAVE.--The board of county commissioners after proper investigation shall cause any deceased indigent or unclaimed decedent to be decently interred or cremated. The cost to be paid by the county of opening and closing a grave shall not exceed six hundred dollars (\$600), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978."

Section 8. Section 24-13-5 NMSA 1978 (being Laws 1939, Chapter 224, Section 5) is amended to read:

"24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES--
COMMISSIONERS' LIABILITY.--The board of county commissioners
of any county within this state may authorize payment for the
burial or cremation of an indigent person, as defined in
Section 24-13-2 NMSA 1978 or of an unclaimed decedent, as
defined in Section 24-13-1 NMSA 1978. All available assets
of the deceased shall be used to reimburse the county for the
cost of burial or cremation. Should the county be required
to pay expenses for burial or cremation of an unclaimed
decedent who has left an estate, the estate shall reimburse
the county for those expenses. The county commissioners
shall be liable either personally or officially to the county
they represent in double the amount they have paid toward the
burial or cremation of a person other than as authorized by
this section."

Section 9. Section 24-13-6 NMSA 1978 (being Laws 1939,
Chapter 224, Section 6) is amended to read:

"24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL
DIRECTOR.--Should any funeral director or other person
allowed by law to conduct the business of a funeral director
accept money from the relatives or friend of a deceased
person whom the board of county commissioners has determined
to be an indigent or an unclaimed decedent, the funeral
director shall immediately notify the board of county
commissioners of the payment or offer for payment, and the

board of county commissioners shall not thereafter pay for the burial or cremation involved, or, if the board of county commissioners has already paid for the burial or cremation, the funeral director shall immediately refund the money paid to him by the board of county commissioners for the burial or cremation."

Section 10. Section 24-13-7 NMSA 1978 (being Laws 1939, Chapter 224, Section 7) is amended to read:

"24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S LIABILITY.--If any funeral director or other person authorized by law to conduct the business of a funeral director receives or contracts to receive any money or thing of value from relatives or friends of a deceased alleged indigent or unclaimed decedent whose burial or cremation expenses are paid or to be paid by the board of county commissioners and fails to notify the board of county commissioners of that fact, the funeral director or other person authorized by law to conduct the business of a funeral director shall be liable to the county in an amount double the amount paid or to be paid by the board of county commissioners of that county."